

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

v.

DAJWAN WARE.

Defendant.

Crim. Action No.: 17-cr-51 (PGS)

**MEMORANDUM
AND ORDER**

SHERIDAN, U.S.D.J.

This matter comes before the Court on Defendant Dajwan Ware's ("Defendant") motion for bail pending appeal. (ECF No. 316). For the reasons stated below, Defendant's motion is denied.

I.

On October 16, 2018, Defendant was found guilty by a jury verdict of one count of conspiring to sell, buy, possess, train, transport, deliver, and receive dogs for purposes of having dogs participate in animal fighting ventures, contrary to 7 U.S.C. §§ 2156(a)(1), (b). (*See* Judgment, ECF No. 280; *see also* Moving Br. at 1, ECF No. 316). Judgment was entered against Defendant on May 30, 2019. (*Id.*).

Defendant's Presentence Report calculated a sentencing range of 8-14 months for the crime committed. (Moving Br. at 1). However, this Court determined at sentencing that an upward variance was appropriate after considering a number of factors, including but not limited to: the nature and circumstances of the offense; the history and characteristics of Defendant; the seriousness of the offense; the need to promote respect for the law; the Court's obligation to provide a just punishment; the need for deterrence; and the need to protect the public from further crimes of Defendant. (*See* Sentencing of Dajwan Ware Transcript ("Sentencing Tr.") at

22:21-25:6, ECF No. 296). Accordingly, the Court sentenced Defendant to 24 months' imprisonment. (*Id.* at 24:3-6; 25:3-6). Defendant was given until August 9, 2019 to surrender himself to the institution designated by the Bureau of Prisons. (*See* ECF No. 291).

On June 4, 2019, Defendant filed a notice of appeal to the Third Circuit, (ECF No. 281), and same was docketed on June 7, 2019, (ECF No. 283). Thereafter, Defendant's appeal was consolidated with two other co-defendants, Justin Love and Robert Elliott, and has been delayed. (Moving Br. at 1). Presently, Mr. Elliott has still not filed his opening appellate brief, and the government has not responded. (*Id.*).

As clarified at oral argument, in this motion, Defendant seeks bail pending appeal on two grounds: first, that Defendant is not a danger to the community; and second, that the Court's decision to impose an upward variance at sentencing is a substantial question of law on appeal. If Defendant is successful on appeal, his sentence can be reduced from 24 months to 8-14 months under the applicable sentencing guidelines range (offense level 10, criminal history category II). (*See* Moving Br. at 1-2, 4; Sentencing Tr. at 3:3-7, 17:14-22). Since Defendant has served approximately 8 months, Defendant contends that granting bail pending appeal may prevent an injustice.

II.

Under the Bail Reform Act, 18 U.S.C. § 3143(b), the Court must order a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal, be detained unless I find "by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and that the appeal is not for the purpose of delay and raises a substantial question of law or fact . . . " 18 U.S.C. § 3143(b); *see also United States v. Elwell*, No. CRIM.A. 09-864 JLL, 2012 WL

2133650, at *2 (D.N.J. June 12, 2012). The burden is on the defendant to satisfy the clear and convincing evidence standard. *See United States v. Miller*, 753 F.2d 19, 24 (3d Cir. 1985).

Here, Defendant has not met that burden. In this case, Defendant committed a serious and inherently violent crime. At sentencing, this Court found that an upward variance was appropriate based in part on the depraved, inhumane, and cruel nature of the crime committed. (*See* Sentencing Tr. at 20:24-21:5, 24:3-14). Nothing in Defendant's motion papers demonstrates by "clear and convincing evidence" that he no longer poses a danger to the community.

Further, Defendant has not submitted a "substantial question of law" raised on appeal. § 3143(b)(B). In order to grant bail pending appeal, a "court must determine that the question raised on appeal is a 'substantial' one, *i.e.* it must find that the significant question at issue is one which is either novel, which has not been decided by controlling precedent, or which is fairly doubtful." *Miller*, 753 F.2d at 23. Here, Defendant's appeal objects to the Court's upward variance from the applicable sentencing guidelines range. (Moving Br. at 3-4). However, this Court's authority to impose an upward variance at sentencing is not "novel" or "fairly doubtful." *Miller*, 753 F.2d at 23. To the contrary, it is well-settled that a district court may exercise its discretion to impose an upward variance from the sentencing guidelines, where reasonable. *See, e.g., United States v. Dyke*, 788 F. App'x 875, 878 (3d Cir. 2019); *United States v. Andre*, 600 F. App'x 824, 827 (3d Cir. 2015); *United States v. Fisher*, 597 F. App'x 685, 688 (3d Cir. 2015). In fact, there is a significant body of appellate case law that affirms upward variances in dog fighting cases. *See, e.g., United States v. Courtland*, 642 F.3d 545, 552-54 (7th Cir. 2011); *United States v. Hargrove*, 701 F.3d 156, 163-65 (4th Cir. 2012).

In sum, Defendant has failed to demonstrate by clear and convincing evidence that he is not likely to pose a danger to the safety of any other person or the community if released; and that his appeal raises a substantial question of law or fact. § 3143(b). As such, Defendant's motion for bail pending appeal is denied.

ORDER

THIS MATTER having come before the Court on a motion filed by Defendant Dajwan Ware ("Defendant") for bail pending appeal (ECF No. 316); and the Court having held oral argument on the motion on April 2, 2020; and the Court having considered the written submissions of the parties, as well as the arguments set forth orally; and for the reasons set forth in the accompanying Memorandum; and for good cause shown;

IT IS on this 3rd day of April 2020;

ORDERED that Defendant's motion for bail pending appeal (ECF No. 316) is **DENIED**.

s/Peter G. Sheridan
PETER G. SHERIDAN, U.S.D.J.